

NEWS NOTES

OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS

Vol. 7, No. 6, July-August, 1955

Philadelphia, Pa.

4 - 3 Vote Affirms 2nd Conviction

Anti-C.O. Move Stymied

In the closing hours of the hearings held by the Senate Armed Services Committee on the extension of the draft, General Hershey, Director of the Selective Service System, asked that the section of the law pertaining to C.O.'s be rewritten. The changes advocated by Hershey would have eliminated many of the gains in recent court victories which have granted C.O.'s an increased measure of protection from the arbitrary acts of local draft boards, appeal boards, and other participants in the classification procedure.

Hershey's attempt to circumvent court decisions and rewrite the law by slipping in a last minute change without opportunity for discussion or opposition testimony got an antagonistic reception even from Senators who are not usually concerned about the rights of conscientious objectors. Alert C.O. representatives in Washington in a number of organizations quickly mobilized enough opposition to let the Senate committee know that the amendment involved serious questions of policy. The committee rejected all of Hershey's suggestions.

A major change advocated by Hershey was the complete elimination of the Department of Justice from the appeal for C.O. classification. As the draft has operated since 1940 the Department of Justice makes an advisory recommendation to the State Appeal Board on each appeal for C.O. classification. The recommendation is based on an FBI investigation, the registrant's personal interview with a hearing officer, and the conclusion of a Department of Justice staff member in Washington.

The participation of the Department of Justice in the appeal procedure was written into the 1940 draft law as a compromise with the wishes of the supporters of conscientious objectors. The objectors wanted the entire procedure dealing with them taken out of the hands of Selective Service, an agency set up to procure manpower for the armed forces.

The proposed change would have further restricted the definition of religious training and belief by leaving in all of the present qualifications and also requiring that the C.O. be "sincere and devout" in his belief.

Courts have recently invalidated a number of irrelevant considerations relied upon by draft boards. Hershey attempted to give some of these arbitrary reasons status by inserting them into the law as permissible standards. Included was authorization for the local board to consider the time a C.O. became converted, willingness to use self-defense, belief in theocratic wars, and lack of humility.

Third Circuit Judges Disagree, but Palmer Conviction Upheld

The second conviction of T. Vail Palmer, Jr. for his conscientious refusal to cooperate with conscription was sustained by the Third Circuit Court of Appeals by a four to three vote June 20. Palmer served one sentence for refusing to register. Prison authorities registered him with Selective Service, and his local board ordered him to report for induction into the army. The second prosecution was for his refusal to report.

Palmer, formerly a CCCO staff member, is now serving as the Friends Minister at Gonic, N. H. He was eligible for a number of deferments at the time he was ordered to report for induction, and no question has been raised at any time about his sincerity as a religious objector.

Although Palmer submitted all of the information requested by his local board he did it in correspondence. He refused to fill out official forms, appeal his I-A classification, or report for a physical examination.

The majority of the court thought that the conviction must be sustained because, "This defendant not only failed to exhaust his administrative remedy; he ignores the whole carefully prepared system altogether."

They concluded, "We do not say for a moment that this defendant is like the rat-like characters who so often come into criminal courts. He may be the prophet of a new day or he may be more dangerous than some of the rat-like characters because his type of refusal to cooperate, if sufficiently wide-spread, would make organized society impossible. In any event, we think the trial judge showed good sense in not sending him to jail. But it also seems to the majority of us that the conviction was right."

The minority opinion written by Judge Maris, was a vigorous dissent. It pointed out that the board had an obligation to consider all of the information in the file. Judge Maris stated, "I find nothing in the act or regulations to support the conclusion that a conscientious objector should be refused the appropriate classification and placed in Class I-A merely because his conscientious scruples against participation in war extend to participation in the preparatory procedure as well. To hold otherwise would be to impute to the Congress which has fully recognized the position of conscientious objectors and provided exemption for them as a class and intention to withhold that exemption from and to brand as felons

(Continued on page 2)

Objector Returned to Army

The Ninth Circuit Court of Appeals has reversed the granting of a petition of habeas corpus which released Russell LaRose from an army stockade. LaRose is a Lutheran conscientious objector from Milwaukee. He was inducted into the army as a I-A-O, available for non-combatant duty only, in February of 1953.

LaRose had sought I-O classification as a C.O. willing to do civilian work only. He was sent to Camp Pickett, Virginia, for basic training in the Army Medical Service. He went AWOL in April of 1953 and was arrested in San Francisco in January of 1954.

While being held by the army and waiting for court-martial as a deserter LaRose charged he was severely beaten. In ruling on the habeas corpus action Judge Harris stated, "there is creditable evidence that LaRose was wantonly beaten while confined at the Presidio."

The petition was granted on the grounds that the local board had denied LaRose the right to appeal his classification. The government appealed Judge Harris' ruling.

The Ninth Circuit ruled that LaRose had been given the rights due him, and that he had not exhausted his administrative remedies.

While the appeal was pending the army placed LaRose on a nonduty, nonpay status but that time should be credited to his army duty record, so that he now has in the two year period. However, the desertion charge still stands against him.

Draft Chairman Forgives

(Since we frequently report items which do not reflect to the credit of draft board members we present here a news item from the San Bernardino, Calif., Telegram which we feel does show a highly creditable action by a local board chairman. Editor's note.)

A draftee stuck a threatening note with a long knife on the draft board chairman's front door Tuesday, but no criminal charges are planned.

The Evening Tribune said Warren J. Heston, 22, a fisherman, admitted that he was responsible. He said he would report in Los Angeles late Wednesday for induction.

"I needed deferment because my wife Betty is still sick and I have \$1,000 in doctor bills," Heston said. He is the father of a month-old daughter, Debra.

"I think the boy was emotionally upset," said the draft board chairman, Lewis Lipton. "I have asked authorities to leave him alone, even though he certainly threw a scare into my family."

PALMER CONVICTION AFFIRMED

(Continued from page 1)

those members of the class which have the most sensitive consciences of all the group."

In ignoring all of the information in the file, the dissent pointed out, "It thus appears that when the local board classified Palmer in Class I-A it acted in plain violation of the law and regulations which required it to consider the material in his file in performing its duty..."

The minority agreed with Harrop Freeman, the defense attorney, that the Palmer case was an exceptional

C. O. Statistics Indefinite

There has been a lot of discussion in pacifist circles about the relative number of C.O.'s under the current draft as compared with the World War II draft. (See NEWS NOTES, December, 1953.) Figures recently published show that the ratio of men in civilian work or ready to enter to the total number of registrants is about the same now as the ratio for the World War II totals. These figures show .05% of the total registrants, or one man out of 2,000, as a conscientious objector of the I-O type. These figures are a ratio used by Selective Service and apparently show that the number of I-O objectors is constant.

Actually, that particular ratio is useless statistically. It does not show the actual ratio of C.O.'s to registrants since it is currently based on all of the present 16 million registrants. With more than 4 million registrants overage and more than 2 million in IV-F, it is obvious that whether or not a man is a conscientious objector is not even involved for far more than half of the total registrants.

A more reliable ratio is that of men in I-A, in the army, or discharged but still under 26, with the comparable I-O men. This is what CCCO calls the "visible supply" of I-A's and I-O's who can be separated out in the public releases by Selective Service. The I-A figure includes I-A-O's, conscientious objectors assigned to non-combatant work in the army, but the number is too small to invalidate the statistics. As of May 1, the visible supply of I-A's was 5½ million as compared with 10,300 I-O's.

Under the World War II draft 12 million men were inducted into the armed forces and 12 thousand into civilian work as conscientious objectors. Thus the present ratio of visible I-O's to I-A's is almost twice as high as the World War II total. The fact that more men who requested I-O (then called IV-E) were misclassified and sent to prison during World War II would cut the difference a little.

There is no question but that the number of non-registrants has increased under the current draft. The above figures indicate an increase in the number of I-O's. However, the number of I-A-O's seems to have decreased. From March 1, 1954, through March 31, 1955, 1,039 I-A-O's reported for training. This would about equal the number of men assigned as I-O's during the same period. Yet under the 1940 draft I-A-O's were estimated to be at least twice as numerous as men in civilian work.

If these conclusions are correct, there are not more conscientious objectors now than previously, but there is a definite movement for C.O.'s to take a more absolutist position against participation in war. This could be partly due to the fact that we have a peacetime rather than a wartime draft. It is also true that the articulate pacifist leadership has definitely been more absolutist since 1948 than it was in 1940.

one where the rule on exhaustion of remedies should be relaxed.

An attempt is being made to get the Supreme Court to review the decision. No second prosecution case has been reviewed by the Supreme Court. The Central Committee for C.O.'s will raise the funds to pay the costs of the appeal.

CD Objectors Ask Jury Trail

Twenty-one of twenty-six pacifists arrested for refusing to cooperate with the civilian defense drill in New York City July 15 have asked for a jury trial. Dorothy Day, Ammon Hennacy, and three others belonging to the Catholic Worker movement intend to plead guilty and not contest the charges as a matter of principle.

New York is the only state with a compulsory civilian defense cooperation law. The violation of the law is a misdemeanor carrying a maximum penalty of one year in prison and a \$500 fine.

The group felt that the mock raid created an illusion of defense against the H-bomb in addition to being psychological preparation for war. In protest they sat quietly in a park rather than to seek shelter as directed by the police.

At a hearing before a magistrate in Lower Manhattan Court, defense attorneys asked for a jury trial. The magistrate adjourned the hearing and announced he would render a decision September 14 on the motion for a jury trial.

Conrad J. Lynn and David I. Shapiro, New York City attorneys who have been active in civil liberties cases, are serving as defense counsel. Harrop Freeman of the Cornell University Law School is a consultant.

In addition to the five persons who wish to plead guilty, it is expected that the number of defendants to be tried will be further reduced by some cases being dropped on technicalities. For example, some of the defendants were arrested even before the sirens stopped blowing thus precluding their opportunity to cooperate.

Three other persons in addition to the twenty-six in the group were arrested at the same time although they were not participants in the demonstration. The charges against one of them was dropped immediately. He was just passing by the group to go to a drinking fountain, and the police herded him in with the others. Another was visiting some of the group but not intending to participate. The third, Richard Kern, is a pacifist who wished to use a different technique but was in the same park.

Kern refused to cooperate either with the drill or his arrest. He went limp and was carried to the patrol wagon. He faces charges of resisting arrest as well as refusal to cooperate with the drill.

The cases of those of the original group of twenty-six persons which finally go to trial may be used to test the constitutionality of penalizing those who refuse to cooperate on the grounds of conscience. If the case is lost in the lower courts but the record indicates constitutional issues are involved the defense may eventually go to the United States Supreme Court.

A Provisional Defense Committee has been organized to collect funds for the expenses. Each defendant had to have \$1,500 bail posted for him in order to be released. The New York City tax on the bail amounts to about \$900. This tax plus expenses through the initial trial will probably total about \$4,000. If extensive litigation and appeals follow, the total cost may be as high as \$20,000. Readers of NEWS NOTES who wish to contribute may send funds to A. J. Muste, treasurer, Room 825, 5 Beekman St., New York 38, New York.

Militarism is the Evil

(An Editorial)

General Hershey has directed the Selective Service System almost from the beginning of its history. He and his staff have always worked hard at telling religious leaders how concerned he is about the welfare of conscientious objectors. A number of pacifist leaders have swallowed this whole.

A larger group of pacifists have taken the attitude that we "could have someone much worse" directing conscription. Unfortunately, many people who say this have said it so often they began to think it had some positive meaning or real value.

There was a great awakening on June 10 when the General tried to slip over unannounced and unseen amendments to the draft law that would eliminate years of costly and hard-won advances. These advances protected C.O.'s from actions of personnel in the Selective Service System which even the courts have labeled "arbitrary, capricious, and in violation of the intent of Congress." (See story page 1.)

Overnight many of the pacifist believers in the Hershey myth were questioning everything about him from his paternity to his integrity. Both the original myth of Hershey's concern for conscience and the new belief that he has sprouted horns come from a failure to separate Hershey as an individual personality from the role he must fill as Director of Selective Service.

It is the role of directing a conscription program towards which pacifist opposition should be expressed rather than against the individual who happens to be the director at any particular time.

Pacifists have always preached such evils of militarism as the loss of individual rights, the primacy of military objectives, the centralization of power, and the increasing totalitarianism of the state. What can be more basic to militarism than a universal military conscription program which Hershey has repeatedly maintained Congress has given him a mandate to run? Why then should we feel an individual has stabbed us in the back when our predictions come true that any system of militarism will move as rapidly as possible to suppress the individual conscience which stands in open opposition?

This inept and abortive legislative attempt by the Selective Service System is only one of several recent examples of the crass methods of militarism we might cite. The arrest of the anti-civilian defense demonstrators is another. Even if New York had been under actual attack the worse thing that could be charged against the demonstrators was that they were choosing their own place to die. They weren't keeping anyone else from seeking cover. They weren't interfering with the test in any way. Yet when the state undertakes military methods, even for rehearsal, no conscientious open disobedience is too trivial to be a threat.

We hope that pacifist energies will not be diverted by attacks upon individuals within the various militaristic programs. There is plenty of more basic work to be done.

Lyle Tatum

THE COURT REPORTER

I PROSECUTIONS

Sentence confirmed since last issue

- 4-7-55 Theodore Bell, Jr.*, 18 months (Jackson, Miss.)
- 4-7-55 Roosevelt Patrick*, 18 months (Jackson, Miss.)
- 4-7-55 Isaac Pennington*, 18 months (Jackson, Miss.)
- 4-11-55 Edgar Lee Hundley*, 18 months (Hattiesburg, Miss.)
- 4-12-55 Frank Volkoff, 2 yrs. probation (Fresno, Cal.) Judge Ernest Tolin

Sentenced since last issue

- 6-6-55 Jack Kalpakoff, 4 yrs. probation (Los Angeles, Cal.) Judge Wm. Mathes
- 6-24-55 Enos Yoder*, 5 yrs. & \$2,000 fine (Fort Wayne, Ind.) Judge Luther Swygert
- 6-24-55 Levi Lehman*, 5 yrs. & \$2,000 fine (Fort Wayne, Ind.) Judge Luther Swygert
- 6-24-55 Abraham Bontrager*, 5 yrs. & \$2,000 fine (Fort Wayne, Ind.) Judge Swygert
- 6-24-55 Albert Mullett*, 3 yrs. probation (Fort Wayne, Ind.) Judge Luther Swygert, sentence reduced from 5 yrs. and \$2,000 fine following agreement to accept civilian work assignment

Acquittals

- 6-7-55 Richard Faxon (Portland, Ore.) Judge Claude McColloch
- 6-9-55 Marvin Good (Philadelphia, Pa.) Judge Allan K. Grim

Sentence reduced

- 7-11-55 Thomas de Lime, III, from 1 year to 3 years probation (Newark, N. J.) Judge A. E. Mordarelli

Appeal

- 4-14-55 Clifton Campbell, conviction affirmed, 4th Circuit Court of Appeals
- 6-20-55 T. Vail Palmer, Jr., conviction affirmed, 3rd Circuit Court of Appeals

(All prosecutions for refusal to report for or submit to induction unless otherwise noted.)

*Convictions for refusal to accept civilian work assignments.

II RELEASED FROM PRISON

On appeal bond

Date ? Nick Klubnikin

Room 300
2006 WALNUT STREET
Philadelphia 3, Pa.

Amish Get Harsh Sentences

Three Amish conscientious objectors were sentenced to prison for five years and fined \$2,000 each by Judge Luther Swygert in Fort Wayne, Indiana, June 24. The sentences were the most severe given any C.O. since the enactment of the Selective Service Act of 1948 with the single exception of a Muslim C.O. who received the maximum sentence of 5 years in prison and a \$5,000 fine in 1951. Although a few other sentences of similar harshness were given they were reduced later on by the sentencing judge.

Enos Yoder, Levi Lehman, and Abraham Bontrager received the sentences for refusal to accept civilian work assignments. A fourth member of the group, Albert Mullett, received the same sentence, but it was suspended and he was placed on probation for three years when he agreed to accept an assignment.

Yoder fainted in the courtroom after the sentence was given. He was taken to a hospital but returned to jail after treatment.

A number of persons in the Fort Wayne area hope to convince Judge Swygert that he should reduce the sentence. The judge can reduce the sentence any time within 60 days of the date it was given.

On parole

- 2-1-55 P. A. Nazaroff
- 6-4-55 Ralph Dorn
- 6-11-55 Burton Rosen

III MEN CURRENTLY IMPRISONED

- Danbury, Conn.—John Bendik
- Milan, Mich.—Carl Nead, Peter Yoder
- Mill Point, W. Va.—Clifton Campbell, Elmer Yoder, Amos Mast
- Seagoville, Tex.—Bill Passmore, William Moser
- Springfield, Mo.—Clarence Bryan, Howard Robertson, John Forbes, Harlan McCall, Richard Arnold, Murray Scheel
- Tallahassee, Fla.—Thomas Tamblyn
- Texarkana, Tex.—Paul Doty, Joel Doty, Sid Doty, Orin Doty, Theodore Bell, Roosevelt Patrick, Isaac Pennington, Edgar Lee Hundley

Tucson, Ariz.—Fred Hildebrand, James Francy
Institution not verified—Enos Yoder, Levi Lehman, Abraham Bontrager

Total number of C.O.'s convicted since 1948 to date: 303 (This is a minimum number, since J.W.'s and Muslims are not included and we miss a few.)

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